



**Billing Code: 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5663-N-01]**

**Additional Waiver Granted to and Alternative Requirement for the Town of Union, New York's CDBG Disaster Recovery Grant**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of additional waiver and alternative requirement.

**SUMMARY:** This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the town of Union, New York, for the purpose of assisting in the recovery related to the consequences of the town's 2011 disasters. HUD previously published in the Federal Register allocation and application notices applicable to this grant on April 16, 2012 (77 FR 22583).

**DATES:** Effective Date: **[Insert date 5 days from date of publication in the FEDERAL REGISTER.]**

**FOR FURTHER INFORMATION CONTACT:** Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Davis at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

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## **I. Background**

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011) (hereinafter, “the Appropriations Act”) makes available up to \$400 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) in 2011. The law provides that grants shall be awarded directly to a state or unit of general local government at the discretion of the Secretary. Based on the damage estimates, the town of Union, New York, received \$10,137,818 in CDBG disaster recovery assistance. HUD previously published the majority of requirements and waivers applicable to the town in the Federal Register on April 16, 2012 (77 FR 22583).

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon: (1) a request by the grantee explaining why such a waiver is required to facilitate the use of such funds or guarantees, and (2) a finding by the Secretary that such a waiver would not be inconsistent with

the overall purpose of the title I of the Housing and Community Development Act of 1974 (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

## **II. Applicable Rule, Statute, Waiver, and Alternative Requirement**

The Secretary finds that the waiver and alternative requirement, as described in this notice, is necessary to facilitate the use of the town's CDBG disaster recovery funds for the statutory purposes, and is not inconsistent with the overall purpose of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Appropriations Act and the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (the HUD Reform Act), regulatory waivers must be justified and published in the Federal Register. The following waiver and alternative requirement provides additional flexibility in program design and allows the grantee to adequately meet statutory requirements unique to this appropriation. As a result, the waiver and alternative requirement apply only to the CDBG disaster recovery funds appropriated in the Appropriations Act, and not to funds provided under the annual Entitlement CDBG program, or those provided under any other component of the CDBG program.

Except as described in this notice and the April 16, 2012, Federal Register notice, statutory and regulatory provisions governing the Entitlement CDBG program shall continue to apply to the town's allocation under this notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 et seq. Applicable entitlement regulations can be found at 24 CFR part 570.

1. Low-to-moderate income area benefit national objective waiver and alternative requirement. Section 105(c)(2) and 24 CFR 570.208(a)(1)(i), applicable to CDBG disaster recovery awards, sets out the requirements for the low- and moderate-income area benefit national objective. Specifically, activities designed to meet this national objective must serve an

area in which at least 51 percent of the residents are considered to be of low- and moderate-income. Union, NY, has requested a waiver allowing activities to meet this national objective if at least 38 percent of the residents in each of the service areas can be classified as low- and moderate-income. The town identified 38% as this is the lowest percentage of low- and moderate-income persons in the services areas of the proposed infrastructure and facilities projects.

Union, NY expressed its intent to facilitate a full and complete recovery, but recognizes that the CDBG disaster recovery funds will not meet all needs. In its waiver request, the town indicated that damage estimates for town facilities and infrastructure alone were between \$3 and \$4 million dollars. Based on these needs, the town determined that its primary focus is to repair and improve vital infrastructure that serves and protects more than 50,000 residents of the town. This assessment utilized Census data, damage estimates, insurance claims, Federal Emergency Management Agency (FEMA) application data, and Small Business Administration (SBA) loan data. Given the limited CDBG disaster recovery funds available, the town prioritized infrastructure repairs because these improvements will benefit significantly more residents both immediately and in the face of future flood events.

In making this determination, Union, NY identified and budgeted for repairs and improvements to critical infrastructure facilities that will directly benefit and assist recovery in the low- and moderate-income areas that were affected by the disaster, even though when considered together with other populations within the service areas of these facilities, the town recognizes that overall populations served by repairs are not predominantly low- and moderate-income.

After meeting citizen participation requirements, the town finalized a budget that includes over \$2.3 million for selected infrastructure and neighborhood facilities. The town provided the following information to demonstrate that the selected infrastructure and neighborhood facilities will benefit low- and moderate-income populations in the disaster-affected area:

a. Westover YMCA (\$202,756 budgeted). This multipurpose facility is located in the Westover Business District and was flooded due to river waters than overtopped the existing levee. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). Westover itself was one of the most heavily damaged areas (over 14 percent of parcels experienced substantial damage).

b. Johnson City Water Treatment Plant (\$716,000 budgeted). The water plant storage facility was damaged by the flood and a new building will be constructed. This plant services the entire village of Johnson City as well as two subdivisions. While Johnson City's low- and moderate-income population is 50.5 percent, the subdivisions served in addition to Johnson City have lower percentages of low- and moderate-income residents, reducing the low- and moderate-income percentage for the service area for this activity to 46.5 percent.

c. Village of Endicott Water Plant (\$150,000 budgeted) and Western Heights Blvd. Water Tank Access (\$6,000 budgeted). The project will provide additional power and repairs to the water plant and the plant's access road. Approximately 53 percent of the village's population is low- and moderate-income. However, there are additional areas served by the plant and when the population of those areas is included in the service area, the percent of residents that are low- and moderate-income is reduced to 38.9 percent.

d. Westover Levee Repair/Enhancement (\$774,622 budgeted). The levee surrounding the

Westover neighborhood was overtopped, sustaining and causing significant damage to the levee and surrounding neighborhoods. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). Westover was one of the most heavily damaged areas from the storm and has a business district that is home to one of the town's largest employers.

e. North Jackson Avenue Sewer (\$20,000 budgeted). The sewer back flowed and damaged homes in the neighborhood. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income).

f. Johnson City-Endicott Water Booster Station Repairs (\$31,000 budgeted). The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). The booster station was completely under water during the storm. The town plans on using CDBG disaster recovery funds for improvements so that water can be provided to the village of Endicott.

Union, NY also carefully considered other unmet needs within the community and how it might meet the remaining recovery needs of low- and moderate-income populations. A local survey of post-flood needs indicated that many of surveyed households are expected to relocate or participate in the FEMA-assisted buyout. In addition, the town consulted Broome County Department of Social Services, which affirms that the affected households generally received FEMA assistance or found other means to support their housing needs. The Broome County Community Organizations Active In Disaster (COAD) and volunteers interviewed a small sample of households in the town and found that the majority of households surveyed had housing needs that were not urgent. Based on this information, the town developed and

budgeted for the housing and acquisition programs described below to ensure CDBG disaster recovery funds meet other unmet needs of residents, particularly low- and moderate-income residents. In addition, the town acknowledges that the planning studies it proposes will identify future activities and likely result in several amendments to the town's initial Action Plan based on new information regarding unmet needs:

2. The town has allocated more than \$3.9 million to the following activities where they anticipate that the majority of beneficiaries will have low- and moderate-incomes:

- a. Owner-Occupied Rehabilitation (\$601,378 budgeted).
- b. Multifamily Rehabilitation (\$100,000 budgeted).
- c. Homeownership Incentives (\$200,000 budgeted).

2. The town has identified other activities that may also benefit low- and moderate-income households:

- a. Acquisition for Open Space (\$2,100,378 budgeted).
- b. Acquisition for Redevelopment (\$950,992 budgeted).

HUD acknowledges that the town also included its Small Business Program Structural/Capital Repairs and Non-Residential Floodproofing in this waiver request. The town indicated both activities occur town-wide. In the activity worksheets that supplement the action plan, the town states that these activities address the priority of enhancing job creation or retention for low- and moderate-income persons; however it has classified these activities as intending to meet the urgent need national objective. After considering the materials submitted in support of the town's waiver request, HUD has determined the requested waiver will not extend to these activities. The town identified these activities as part of their priority for low- and moderate-income job creation and retention, the service areas for these activities have not

been identified, and the town has indicated that it plans to continue its analysis of unmet needs for its low- and moderate-income populations.

HUD has reviewed the information submitted by the town in its Action Plan and other supporting documentation in conjunction with the Department's review of this waiver request. In its funding allocation methodology, HUD estimated the severe unmet needs of the most impacted counties in each state using the best available data at the time. In its application, the town provided updated estimates of severe damage to storm water facilities, sanitary sewer plans, and water treatment plants and explained its rationale for prioritizing repair to these facilities. The town indicated that since the storm damaged critical utility service facilities, it prioritized infrastructure repairs to significantly benefit residents both immediately and in the face of future flood events. Also, the town's surveys of homeowners and businesses indicate that the need for repair of infrastructure is greatest. The town's submissions provide a sound basis for why a waiver is necessary to facilitate the use of CDBG disaster recovery funds.

The town's submissions also support a finding that a waiver of section 105(c)(2) in conjunction with alternative requirements is not inconsistent with title I of the HCD Act. The town will be able to address its most critical unmet needs, while also ensuring it is able to dedicate at least 50 percent of its entire CDBG-DR award to activities that benefit low- and moderate-income persons. Maps of affected areas and other information provided by the town demonstrate the unique circumstances faced within areas affected by Hurricane Irene. The maps show flood inundation to be greatest in areas that do not include a majority of the homes occupied by low- and moderate-income residents. The town's priority is to repair damaged infrastructure and neighborhood facilities. Although the service areas of those facilities are often considerably larger than the town's predominantly low- and moderate-income areas, investment



in these activities will also benefit disaster-affected low- and moderate-income populations that are within the service area of these facilities. And finally, although the town concluded based on its initial surveys that its greatest need is repair of infrastructure, the town has budgeted CDBG disaster recovery funds for additional studies of unmet needs and plans to amend its Action Plan as needed based on new information acquired in the studies.

HUD concludes that good cause exists to support the town's request for a waiver of section 105(c)(2) of the HCD Act and 24 CFR 570.208(a)(1)(i) and imposes the following alternative requirements:

a. Only the activities identified as the Westover YMCA, Johnson City Water Treatment Plant, Village of Endicott Water Plant, Western Heights Blvd. Water Tank Access, Westover Levee Repair/Enhancement, North Jackson Avenue Sewer, and the Johnson City-Endicott Water Booster Station Repairs, totaling \$2,305,891, as detailed in the town of Union's Action Plan submitted to HUD on July 23, 2012, may utilize this waiver; and

b. If the above referenced public improvements and public facilities activities are classified as meeting the low- and moderate-income area benefit national objective, each must serve an area in which at least 38 percent of the residents are considered low- and moderate-income; and must otherwise meet all other applicable requirements, including those for eligibility and national objective; and

c. The town must continue to identify the specific resources for low- and moderate-income households in each amendment to its Action Plan. If additional unmet disaster recovery needs are subsequently identified among households with low- and moderate-incomes, the town must make reasonable efforts to ensure those needs are addressed.

The activities identified above that may utilize the waiver are only proposed projects at

this stage and the town must complete the environmental review process described in 24 CFR Part 58 for each proposed project. If the town determines that the environmental review is satisfactory, the town must request and receive a release of funds from HUD before it can commit funds or take any choice limiting action with respect to the projects. Approval of this waiver does not constitute approval of the proposed projects.

As a reminder, CDBG-DR funds used for all infrastructure projects must not duplicate any benefit or other source of funding, such as that provided through FEMA's Public Assistance (PA) program. All work funded with CDBG-DR funds on the above listed projects must be determined as ineligible under the FEMA PA program.

### **III. Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

### **IV. Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by

calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Date: September 26, 2012

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Mark Johnston  
Acting Assistant Secretary for Community  
Planning and Development

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